



**Board of Zoning Appeals**  
**Zoom Hybrid Meeting**  
**Draft Meeting Minutes**  
**June 21, 2023**  
**Approved: \_\_\_\_\_**

**Board Members Present:** Chair Stephen Morreale, Robert Howarth, Andrew Hillman, Cheryl Thompson, David Tyler

**Board Members Absent:** Thomas Butler

**Others Present:** Kristin Savard, Jessica Janssen, Katrina Morse, Karen Benjamin

**Town Staff:** Niels Tygesen, Mollie Duell

### **Proceedings**

Chair Morreale called the meeting to order at 7:00 PM at Town Hall.

### **Approval of Agenda**

Howarth requested two items be added to the Agenda; an update on the status of required training, as previously discussed by the Town Board, and additionally, an update on the status of the Angelhearts proposal and if any BZA approval will be required.

### **Approval of Past Meeting Minutes**

Approval of past minutes was postponed.

### **Privilege of the Floor**

No members of the public approached the BZA regarding any items not on the agenda.

### **Old Business Items**

#### **VAR2303-002: New Women's Residential Addiction Recovery Center Area Variance**

The applicant and property owner, Ithaca Alpha House Center, Inc., proposes to construct a new two-story detached building, approximately 13,385 gross square feet, for use as a 25 bed facility associated with the existing Cayuga Addiction Recovery Services building on the subject site. Two area variances were initially requested from the Board of Zoning Appeals (BZA) as part of a site plan review with the Planning Board. Ulysses Town Code (UTC) 212-29.A permits only one principal building on a lot in the A/R zone, and UTC 212-29.L limits the permitted maximum floor area of a new nonagricultural building to 5,000 square feet. The applicant has subsequently requested a third area variance from UTC 212.29.J to exceed the maximum lot coverage of 5%. The Planning Board reviewed the proposal at their June 6<sup>th</sup> meeting, focusing on the proposed fire retention system and water supply. The SEQr determination from 2019 was reaffirmed unanimously by The Planning Board after confirming a cistern is planned to be used for holding water and no additional ponds will be added.

In October 2019, an area variance was approved with conditions. The variance allowed greater than 5% lot coverage, which would be exceeded with the construction of the addition. The conditions for the variance included requiring a 500-year stormwater plan and filing a restrictive covenant over the entire CARS property, which lies partly within Tompkins County and partly within Schuyler County. Following BZA approval, the Site Plan was approved by the Planning Board. The deed restriction was intended to be filed when applying for a building permit. However, the project was paused before reaching this final step, when the COVID-19 pandemic shutdown temporarily stopped the project in 2020. In December 2019, significant changes to the Town's zoning laws were adopted, and the property was reclassified

from a Residential to Agricultural zone. The covenant is still intended to be recorded upon receipt of all Town approvals, including acquiring a building permit.

Because of the 2019 zoning changes, two new variances are required. First, the proposal will now require a variance to allow the property to have a second principal building. Second, a variance is needed to allow the maximum square footage of the building to exceed 5,000 feet.

The BZA discussed the timeline of the CARS project so far with Kristin Savard, owner of Advance Design Group, and Jessica Janssen, the CEO of Cayuga Addiction Recovery Services. Determining the next steps is dependent on clarifying which elements of the proposal are entirely new. The proposal has now been in development for years, and BZA members expressed interest in seeing previous materials summarizing the timeline. Chair Morreale requested to see minutes from meetings that have discussed the proposal thus far.

Discussion ensued on the status of the application and whether or not the proposal is considered a rehearing. Plans have changed, and a rehearing would require unanimous approval from BZA. Savard believes the application is entirely new, but Morreale stated that it seems that the BZA is revisiting the same application. Howarth stated that he also considers this to be a rehearing. Savard believes this is a new hearing because while the project was paused, unbeknownst to the design team, zoning changed through the entire town.

Depending on which variance is being considered, there may be a rehearing, but this will depend on clarifications to be made with legal counsel.

Chair Morreale stated he would like a brief summary of what the Planning Board has decided requiring this property and why. Thompson asked if the project has changed in relation to these new variances. Savard explained that they have not changed, and the two additional variances are only required due to the 2019 zoning law changes. Changes that have taken place are a result of limited resources due to a rise in construction costs related to the Covid-19 pandemic. These changes include reducing certain elements of the project, such as removing the additional parking lot that was originally planned.

Currently Savard is focused on determining if the 500-year storm plan requirement will still be required before moving forward with the new variances and finalizing building plans. Savard would like to have the 500-year storm design requirement removed, since developing this plan will raise construction costs considerably. Savard also voiced concern about how much environmental disturbance would be caused from construction related to the stormwater plan. Savard's goal is to reduce the footprint of the impact, reduce construction costs, stay further away from adjacent properties, and relocate funds that could be used for other areas of the project, especially elements that are beneficial to directly supporting addiction recovery treatments. Howarth stated that he believes a rehearing is needed to remove the 500-year stormwater plan requirement and noted he did not feel that it is likely he would approve removing this; a unanimous vote from the BZA would be required.

Savard spoke about newer techniques that are being used to calculate future stormwater estimations, noting that the State is developing methods to address the initial concerns from the BZA that led to the 500-year stormwater condition being added to the variance. Savard stated that newer studies are showing that perhaps the greater occurrence of these intense storms will be less critical than previously thought. Howarth questioned the status of these new methods and if they have been federally approved. Discussion ensued over various agencies that address stormwater and flooding and which

data is being referenced in the new figures that Savard is referencing. Chair Morreale noted that the BZA may ask for stricter requirements than State regulations would. Howarth noted that there have been multiple 500 and 100-year storms in the past 20 years, which is why the condition was added to the original variance. Savard expressed interest in a Town engineer or other agency specializing in engineering offer advice on decisions related to changing the 500-year stormwater plan requirement.

Tygesen reviewed the original variance and associated conditions. Amendments to the previously approved variance in 2019 could be considered a rehearing, however the variance requests for a second principal building and exceeding the maximum gross square footage of the building are new. Tygesen asked BZA members if there was any additional information they required from the applicant in order to move forward with the proposal; BZA members asked to see previous meeting minutes, review where the Town of Hector stands regarding this project, clarify details about the deed restriction, and hear further information from legal counsel.

The BZA and Savard discussed what communications had taken place with Jimmie Joe Carl, a stormwater engineer who was previously hired by the town to review the stormwater plan. Discussion ensued over Carl's involvement in developing in the plan. Additionally, Savard mentioned the buffer setback issues that had been previously discussed and resolved during the June 6<sup>th</sup> Planning Board meeting.

Tygesen introduced Gina Middleton, of Coughlin & Gerhart, LLP. Middleton stated that this proposal will most likely be a rehearing if the application has not changed, but this is yet to be determined. Discussion ensued over clarifying which elements of the proposal will need a rehearing and which elements are new. Chair Morreale asked if the entire application would need to be considered a rehearing if one element qualifies; this is one of the elements that will need further review from legal counsel. Savard asked if there had been any statute of limitations on the original variance; Tyler responded this may have occurred. Middleton reviewed the definition of a rehearing, and noted that if a final decision was not properly filed, it is possible that there is nothing to rehear or appeal. Discussion ensued on what the next possible steps could be for this proposal and in which setting these communications must take place.

### **New Business Items**

#### **VAR2305-01: Benjamin Area Variance**

The applicant, Katrina Morse, on behalf of the owner, Karen Benjamin, applied for a minor subdivision to subdivide the existing 15.07-acre lot into two lots. The Planning Board was briefed on their proposal during the Board's March 7th meeting, and subsequently the applicants have proposed a new lot configuration (plat dated 05.08.2023) which will require an area variance from the Board of Zoning Appeals (BZA). Ulysses Town Code (UTC) 212-130.A states flag lots shall meet the minimum lot area excluding the pole, lot width, and lot depth requirements of the zoning district within which it is located. Per the definition of 'Lot, Flag' under UTC 212-22 and per the minimum lot frontage width requirements for the A/R zone under UTC 212-29.D, the front lot line is required to be 400 feet in width. The applicant has proposed a lot width of 200 feet.

Benjamin and Morse presented the proposal. The first plan complied with the zoning code and would not require a variance, but the orientation of the subdivided flag lot would create a strange horseshoe shape for the parent lot which could devalue the land.

The applicant noted that the surveyor thought the revised plan that required a variance is the best option. All requirements are met, except for having 400 feet of the subdivided lot parallel to the road.

The BZA reviewed the map with the Morse and Benjamin. Howarth voiced concern over any future subdivisions taking place. Chair Morreale reviewed alternate options for land configurations. Discussion ensued on what other options the applicant could consider. The applicant explained options are limited due to the importance of preserving elements of the landscape, such as the walnut grove. Tygesen clarified the regulations pertaining to flag lots.

Thompson suggested the possibility of building a home as an accessory dwelling unit, but acknowledged that Morse could not own the property. Howarth noted there are 3 possibilities, including building the new home as an accessory dwelling unit which limits its maximum size to 1,250 square feet, returning to the plan that creates a strange lot configuration but does not require a variance, or continuing with the desired plan that needs BZA approval. Howarth suggested creating a deed restriction that will allow no further subdivisions. Benjamin is in favor of the last option, as long as an accessory building would still be allowed on her property. It was noted that a deed restriction would supersede future zoning law changes. The new flag lot would not have any deed restrictions.

### **Board of Zoning Appeals Resolution No. 2023-003**

#### **A Resolution of SEQR Determination for the Benjamin Area Variance Located at 4190 Dubois Road, Town of Ulysses, Tax Parcel 27.-3-12.2**

**Whereas**, the proposed action is in consideration of an area variance for a proposed parcel located at 4190 Dubois Road (tax map # 27.-3-12.2), zoned A/R: Agricultural/Rural; and

**Whereas**, the area variance request is related to a minor subdivision application to subdivide the subject lot into two parcels: 'Parcel A1' approximately 2.14 acres in area and 'Parcel A2' approximately 12.93 acres in area; and

**Whereas**, the area variance request is relief from the Code of the Town of Ulysses 212-130.A, 212-29.D, and the definition of 'flag lot' under 212-22, to reduce the minimum required lot width at the front lot line for 'Parcel A1' from 400 feet to 200 feet; and

**Whereas**, the Board of Zoning Appeals on June 21, 2023, has reviewed and accepted as adequate a proposed subdivision map entitled "Final Plat Showing Lands of Karen Benjamin to be Conveyed to Katrina Morse, located at 4190 Dubois Road, Town of Ulysses Tompkins County New York", prepared by Shieve Land Surveying, dated August 6, 2019, revised May 8, 2023, and other application materials; conditional on a deed restriction prohibiting any further subdivision of the properties; and

**Whereas**, the requested area variance is an Unlisted action under the Code, Rules, and Regulations of the State of New York Title 6, Part 617 (SEQR) for which the Town of Ulysses Board of Zoning Appeals has reviewed a Short Environmental Assessment Form in an uncoordinated environmental review; and

**Whereas**, the proposal should not negatively impact the character of the neighborhood or the A/R zones.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS,**

Considering all of the statutory factors set forth above, the Board of Zoning Appeals finds the following:

That the Town of Ulysses Board of Zoning Appeals hereby makes a negative determination of environmental significance in accordance with Article 8 of the Environmental Conservation Law and 6 NYCRR Part 617 New York State Environmental Quality Review for the above referenced action as proposed, based on the information in the Short Environmental Assessment Form, and, therefore, an Environmental Impact Statement will not be required.

**Motion:** Howarth made a motion to approve Board of Zoning Appeals Resolution 2023-003 after adding information about the deed restriction; Hillman seconded.

**Vote:** Howarth, aye; Tyler, aye; Thompson, aye; Hillman, aye; and Chair Morreale, aye.

**Motion Carried.**

#### **Board of Zoning Appeals Resolution No. 2023-004**

**A Resolution of an Area Variance Approval for the Benjamin Area Variance Located at 4190 Dubois Road, Town of Ulysses, Tax Parcel 27.-3-12.2**

**Whereas**, an area variance was submitted to the Board of Zoning Appeals (BZA) by Karen Benjamin, applicant and owner for property located at 4190 Dubois Road (tax map # 27.-3-12.2), and which is approximately 15.07 acres in size, zoned A/R: Agricultural/Rural; and

**Whereas**, the area variance request is related to a minor subdivision application to subdivide the subject lot into two parcels: 'Parcel A1' approximately 2.14 acres in area and 'Parcel A2' approximately 12.93 acres in area as shown on the survey map dated May 8<sup>th</sup>, 2023, and sketch attached; and

**Whereas**, the area variance request is relief from the Code of the Town of Ulysses 212-130.A, 212-29.D, and the definition of 'flag lot' under 212-22, to reduce the minimum required lot width at the front lot line for 'Parcel A1' from 400 feet to 200 feet; and

**Whereas**, the Planning Board considered the proposal during sketch plat review on June 6, 2023 and provided comment to the BZA that the Planning Board unanimously concluded that the proposed project does not pose a detrimental environmental impact to the site or to the character of the surrounding community; and

**Whereas**, this is an Unlisted Action for which the Town of Ulysses Board of Zoning Appeals has on June 21, 2023, made a negative determination of environmental significance, after having reviewed and accepted as adequate a Short Environmental Assessment Form, subject to the deed restriction against further subdivision; and

**Whereas**, the action does not require 239 review, per the Inter-Governmental Agreement made with Tompkins County 24 November 2003; and

**Whereas**, notice of the public hearing was published in the Ithaca Journal on June 16, 2023, was posted on the Town's Public Legal Notice Board, was posted on the Town's webpage, and was mailed to property owners within a 500-foot radius of the subject property; and

**Whereas**, by considering the criteria listed in the Consolidated Laws of New York Chapter 62, Article 16, Section 267-B.3.b, the BZA reviewed the record and weighed the benefits to the applicant against the detriment to the health, safety and welfare of the neighborhood if the variance was granted; and

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than area variances.
3. Whether the requested area variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS,**

Considering all of the statutory factors set forth above, the Board of Zoning Appeals finds the following:

1. The benefit to the applicant in the granting of the area variance to decrease the minimum required lot width at the front lot line for 'Parcel A1' from 400 feet to 200 feet will outweigh the detriment to the health, safety and welfare of the neighborhood.
2. The granting of the area variance to decrease the minimum required lot width at the front lot line will not create an undesirable change in the character of the neighborhood and will not be a detriment to nearby properties due to the deed restriction on further subdivision.
3. The benefit sought by the applicant to decrease the minimum required lot width at the front lot line can be achieved by some method, feasible for the applicant to pursue other than an area variance, however with the required deed restriction below, this is the most desirable outcome for the owners which preserves the environmental character of the site.
4. The requested area variance to decrease the minimum required lot width at the front lot line is substantial.
5. The proposed area variance to decrease the minimum required lot width at the front lot line will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district with the deed restriction in place.
6. The alleged difficulty to decrease the minimum required lot width at the front lot line is self-created.

For the reasons set forth above, and upon the evidence, law and facts, the BZA hereby does grant the area variance to decrease the minimum required lot width at the front lot line for 'Parcel A1' from 400 feet to 200 feet for the proposed minor subdivision located at 4190 Dubois Road, subject to the following condition:

### **Condition of Approval**

1. A deed restriction prohibiting any further subdivision of 4190 Dubois Rd, identified as 'Parcel A2', as delineated on the survey map prepared by Shieve Land Surveying, dated August 6, 2019, revised May 8, 2023, attached herein. A copy of the deed restriction shall be presented to the Planning Board for Final Plat approval, and a certified copy of the recorded instrument shall be filed with the Town.

**Motion:** Hillman made a motion to approve Board of Zoning Appeals Resolution No. 2023-004 upon adding the condition of a deed restriction to prevent future subdivisions from the parent lot; Howarth seconded.

**Vote:** Howarth, aye; Tyler, aye; Thompson, aye; Hillman, aye; and Chair Morreale, aye.

**Motion Carried.**

The planning board will need to approve the subdivision when the variance is approved.

### **Additional Topics of Discussion**

Howarth requested an update on the status of the training requirements previously discussed by the Town Board. Tygesen stated that nothing has been finalized at this time.

Howarth requested an update on the status of the Angelhearts proposal, specifically if a variance will be required. Tygesen stated that Legal could provide a memo to clarify if any BZA approval would be required. Tyler asked if there is a statute of limitations with the special use permit and noted that there may be limitations on non-conforming uses being continued. Discussion ensued regarding the case of a non-conforming use. Tygesen state the project proposes a restaurant which is permitted as a special use if approved by the Planning Board. The previous gas station would be considered a non-conforming use, but this is not planned.

### **Town Board Liaison Report**

No Town Board members were present at the meeting.

**Motion:** Howarth made a motion to adjourn the meeting; Thompson seconded.

**Vote:** Tyler aye; Thompson aye; Hillman aye; Howarth, aye; and Chair Morreale, aye.

**Motion Carried.**

**ADJOURNED 9:03 PM**

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Mollie Duell  
Board of Zoning Appeals Secretary